

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

James Scioli, on behalf of himself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Cape May

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Donald M. Doherty, Jr., Friedman Doherty, LLC, 125 North Route 73, West Berlin, NJ 08091 / dmd@friedmandoherty.com

DEFENDANTS

Goldman & Warshaw, P.C.

County of Residence of First Listed Defendant Camden

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	PTF	DEF	
	<input type="checkbox"/> 1	<input type="checkbox"/> 1		<input type="checkbox"/> 4	<input type="checkbox"/> 4
	<input type="checkbox"/> 2	<input type="checkbox"/> 2		<input type="checkbox"/> 5	<input type="checkbox"/> 5
	<input type="checkbox"/> 3	<input type="checkbox"/> 3		<input type="checkbox"/> 6	<input type="checkbox"/> 6

Incorporated or Principal Place of Business In This State

Incorporated and Principal Place of Business In Another State

Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7	Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692

VI. CAUSE OF ACTION

Brief description of cause:
Fair Debt case - illegal collection of attorneys fees

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMANDS

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

11/24/08

DATE

SIGNATURE OF ATTORNEY OF RECORD

FRIEDMAN DOHERTY, LLC

Donald M. Doherty, Jr., Esq.

(DD-0466)

125 N. Rt. 73

West Berlin, New Jersey 08091

(856) 988-7777

Attorneys for Plaintiff and Putative Class

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(CAMDEN VICINAGE)**

James Scioli, on behalf of himself and all others similarly situated,	:	Civil Case No. 08-cv-05739-JEI-JS
<i>Plaintiff,</i>	:	<i>First Amended</i> Complaint (Class Action)
vs.	:	
Goldman & Warshaw, P.C.,	:	
<i>Defendant.</i>	:	

Plaintiff hereby complains against the Defendant as follows:

PARTIES

1. This action is brought by the Plaintiff on behalf of himself, and all others similarly situated, whose joinder in this action is impracticable because of the number of Plaintiffs and the size of their prospective claims.
2. Plaintiff, James Scioli, maintains his domicile at 228 Haven Avenue, Ocean City, New Jersey. He is a New Jersey citizen.
3. Defendant Goldman & Warshaw, P.C. is a New Jersey law firm that engaged in debt collection activities complained of herein.

JURISDICTION

4. Jurisdiction is proper in the Federal District Court as the case is premised solely upon a federal question as defined under 28 U.S.C. 1331, to wit, application and interpretation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et. seq.

5. Jurisdiction is proper in the District of New Jersey pursuant to 15 U.S.C. 1692k(d), as the Plaintiff and many of those similarly situated to him, reside in New Jersey and the Defendant is located in New Jersey and transacts business in New Jersey.

BACKGROUND

6. Defendant regularly collects, or attempt to collect debts due (or claimed to due) another.
7. Defendant collects consumer debts for, among other clients, Capital One Bank (USA), N.A. and related Capital One entities, such as Capital One Auto Finance.
8. On or about October 29, 2008, Plaintiff received a summons and complaint from the Defendant relating a bill alleged to be due to Capital One for his personal credit card.
9. The Special Civil Part summons and complaint seek to collect sums that are not able to be collected legally under New Jersey law.
10. Defendant sought to collect “contractual attorney’s fees” in the amount of \$337.81.
11. Defendant also sought to collect “statutory attorney’s fees”, available in the Special Civil Part pursuant to N.J.S.A. 22A:2-42, in the amount of \$82.86.
12. According to the New Jersey Supreme Court in *Lettenmaier v. Lube Connection*, 162 N.J. 134 (1999) (and other case law authorities), the attorney fee provisions of the Special Civil Part statute only “comes into play in cases in which counsel fees are not otherwise awardable under the [Court] Rules or under a specific fee shifting provision”.
13. The availability of fee-shifting attorneys fees by contractual provision is recognized by New Jersey case law authority and further acknowledged in Pressler, Current N.J. Court Rules, R. 4:42-9, Comment 2.10.
14. Defendant misrepresented the amount due and attempted to “double dip” the counsel fee award by collecting such fees under two different, and mutually exclusive, fee mechanisms.

CLASS ALLEGATIONS

15. The proposed class consists of all natural persons within the preceding 12 months to whom the Defendant directed pleadings/correspondence similar to that received by the Plaintiff alleging that consumer debts were due to third parties.
16. Defendant has been in the debt collection business for many years and has secured large volume, collection-case generating clients such as Capital One. Defendant actually

markets itself as the “premier debt collection law firm” and maintains offices in New Jersey and New York.

17. Members of the prospective class are so numerous that joinder of all class members is impractical. Plaintiff’s good faith belief is that there are at least several hundred class members. The exact number and identities of the class members are currently unknown and can be ascertained from the books/records of the Defendants and/or appropriate discovery.
18. Common questions of law and fact exist as to all members of the class that predominate over any questions affecting any individual class members of the class.
19. Common questions of fact include, but may not be limited to:
 - a. What volume of collection materials alleged to violate the Fair Debt Collection Practices Act was sent within the 1 year limitation period of 15 U.S.C. 1692k(d)?
 - b. What is the “net worth” of the Defendant?
20. Common questions of law include, but may not be limited to:
 - a. Are Defendants “debt collectors” within the purview of 15 U.S.C. 1692a(6)?
 - b. May Defendants legally seek to collect and/or represent as due and owing both statutory counsel fees and contractually stipulated counsel fees for the same debt in the same proceeding?
 - c. Do the contentions listed in paragraph 8 through 14 constitute a violation of the Fair Debt Collection Practices Act?
 - d. What is the meaning of “net worth” within the context of the FDCPA - “book value” or “fair market value”?
21. Plaintiff’s claims are typical of the claims of the class and Plaintiff has the same interest as all other members of the class - ensuring Defendant complies with all laws affecting the collection of consumer debts.
22. Plaintiff will fairly and adequately represent and protect the interest of the class. Plaintiff is a person against whom the Defendant directed a pleading/communication that failed to comply with the Fair Debt Collection Practices Act in the manner described in paragraphs 8 to 14.
23. Plaintiff has retained counsel with experience in class action litigation, as well as other complex litigation. The interest of the Plaintiff is coincident to, and not antagonistic to, the interest of other class members.
24. The questions of law and fact common to members of the class predominant over any questions affecting individual class members. The prosecution of separate actions by individual members of the class would result in duplicitous litigation over the same issues

and possibly create a risk of inconsistent or varying adjudications that could result in establishing inconsistent standards of conduct, policies and/or procedures for the Defendant. The Defendant holds policies and/or acts in ways that affect all class members identically.

25. The class action mechanism is superior to other available methods for the fair and efficient adjudication of this controversy.
26. The class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation. Neither Plaintiff, nor his counsel, will have difficulty managing their respective roles in prosecuting this action as a class action.

VIOLATION OF FAIR DEBT COLLECTION PRACTICES ACT,
15 U.S.C. 1692 et. seq.

27. Defendant's activities and representations regarding the amount of counsel fees that could be collected from the Plaintiff and those in similar circumstances fails to comply with the Fair Debt Collection Practices Act and constitutes a false or misleading representation under 15 U.S.C. 1692e and/or an unfair practice under 15 U.S.C. 1692f and/or otherwise violates the Act.

WHEREFORE, Plaintiff requests judgment as follows:

- a. Certifying this matter as a class action;
- b. Awarding such sums as appropriate under 15 U.S.C. 1692k;
- c. Awarding counsel fees and costs of suit;
- d. Awarding pre-judgment interest;
- e. Awarding other such relief as the Court may deem fair and equitable.

FRIEDMAN DOHERTY, LLC
/s/Donald M. Doherty, Jr.

Dated: November 24, 2008

DONALD M. DOHERTY, JR.